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No. 82-936.

In the
Supreme Court of the United States.

OCTOBER TERM, 1982.

FREDERICK C. LANGONE,
MADELINE G. SARNO, VICTOR GRILLO,
LOUIS FERRETTI, GAIL A. FASANO,
THE LANGONE FOR LIEUTENANT GOVERNOR
COMMITTEE, AND FRANCIS X. BELLOTTI,
APPELLANTS,

v.

MICHAEL J. CONNOLLY,
AS HE IS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS,
DEMOCRATIC STATE COMMITTEE,
SAMUEL ROTONDI, JOHN F. KERRY,
LOIS PINES, AND EVELYN MURPHY,
APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT
FOR THE COUNTY OF SUFFOLK
COMMONWEALTH OF MASSACHUSETTS.

Appellants' Supplemental Brief Opposing Motion to Dismiss of Appellee, Connolly.

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JURISDICTION OF THIS COURT

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts in Frederick C. Langone, et al.[1] v. Secretary of the Commonwealth, et al.[2], No. S-2889, was issued by that Court on February 16, 1983. Copies of the opinion were filed separately with the Clerk of the this Court on February 17, 1983. This Supplemental Brief Opposing the Motion to Dismiss of Appellee Connolly is

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1. Madeline G. Sarno, Victor Grillo, Louis Ferretti, Gail A. Fasano, The Langone for Lieutenant Governor Committee, Joel M. Pressman, and plaintiff-intervenor, Francis X. Bellotti, as Attorney General of the Commonwealth.

2. The Democratic State Committee, Evelyn F. Murphy, Samuel Rotondi, Louis R. Nickinello, John F. Kerry, and Lois E. Pines.

filed calling attention to matters contained in the opinion of the Supreme Judicial Court not available at the time appellants filed their Brief Opposing the Motion to Dismiss. Sup. Ct. R. 16.6. (Hereinafter, the Court's opinion will be cited as Opinion.)

The Supreme Judicial Court has upheld the constitutionality of M.G.L.c. 53, §§1 et. seq., the Massachusetts statutory scheme for obtaining access to state primary election ballots. However, it is evident that in adjudicating the crucial questions of whether enforcement of the provisions of M.G.L.c. 53, §§1 et seq., would infringe or abridge the constitutional rights of the state Democratic Party and whether the state Democratic Party may regulate ballot access restricting appellants in the exercise of their First Amendment

rights of expression and association,[3] the Supreme Judical Court placed principal reliance upon decisions of this Court interpreting the Federal Constitution. After noting that M.G.L.c. 53, §44, provides "nomination of candidates for nomination at state primaries shall be by nomination papers", and that M.G.L.c. 53, §2, provides "[n]o candidates shall be nominated ... in any other manner than is provided in this chapter or chapter fifty-two"[4], the Supreme

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3. Contrary to the assertions of appellee Connolly in his Supplemental Brief at pages 7-12, these questions and others specified in Appellants' Brief Opposing the Motion to Dismiss of Appellee Connolly, at pages 7-11, were presented to the Supreme Judicial Court by the briefs filed with that Court both on behalf of the appellants and the appellee Democratic State Committee.

4. At page 6, n. 4, of its Opinion, the Court ruled that M.G.L.c. 52 is irrelevant to the constitutional questions presented.

Judicial Court stated that M.G.L.c. 53 "may reasonably be construed in two ways: as providing the only requirements for primary ballot access, excluding all others, or ... as providing minimum requirements for primary ballot access but permitting imposition by the party of additional requirements ..."[5] Opinion, at 6. Relying singularly and at length on its analysis of this Court's decision in Democratic Party of the United States v. LaFollette, 450 U.S. 107, 101 S. Ct. 1010 (1981), the Supreme Judicial Court ruled that the first of these statutory constructions would render M.G.L.c. 53

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5. In spite of its view that either interpretation is reasonable, the Court concluded with respect to appellants' claim for lack of fair notice that "[a]ny assumption that M.G.L.c. 53 provided the exclusive requirements for primary ballot access was unwarranted." Opinion, at 19, n. 6.

unconstitutional as substantially interfering with the funadamental rights of association guaranteed to the state Democratic Party. Opinion, at 9-12. Therefore, the Supreme Judicial Court rejected a construction of M.G.L.c. 53 that would render ineffective party rules governing ballot access. Opinion, at 12. The Supreme Judicial Court adopted the second construction, citing its "duty to construe statutes so as to avoid ... constitutional difficulties, if reasonable principles of interpretation permit it."

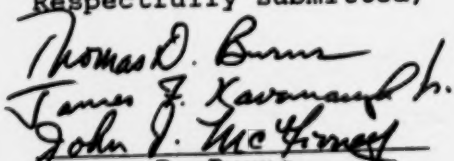
The opinion of the Supreme Judicial Court cited this Court's First Amendment cases as controlling. The decision rested solely on federal grounds. If the Supreme Judicial Court held as it did because it felt under compulsion of federal law as enunciated by this Court, it should be relieved of that compulsion

for if the Supreme Judicial Court erred in its understanding of federal law, this Court has jurisdiction and should decide the federal issues. Zachini v. Scripps-Howard Broadcasting Company, 433 U.S. 562, 566568, 97 S. Ct. 2849, 2852-2854 (1977).

CONCLUSION

For the reasons stated above, appellants respectfully request that the Motion to Dismiss of appellee Connolly be denied.

Respectfully submitted,



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